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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,977	03/29/2001	Hiroyuki Abe	040808-5108	4822

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EXAMINER

CONNOLLY, PATRICK J

ART UNIT PAPER NUMBER

2877

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/819,977	ABE ET AL	
	Examiner	Art Unit	
	Patrick J Connolly	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claim 13-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected groups, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10312003.

Applicant's election without traverse of claims 1-12 in Paper No. 10312003 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,658,183 to Sandhu et al (hereafter Sandhu).

As to claim 1, Sandhu discloses a system for real-time control of semiconductor wafer polishing including (see Figure 1, also column 8):

a detection apparatus for detecting a process end point comprising:

a characteristic quantity extraction component in the form of an interferometer (60) for extracting multiple characteristic quantities (see column 8, lines 30-45);

a logical operation component in the form of a processor (74).

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As to claim 3 and 5, Sandhu discloses logical operation determination by fuzzy logic techniques that are understood to include the tuning of membership functions (see column 8, lines 45-50).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,271,047 to Ushio et al (hereafter Ushio).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

As to claims 2 and 7, Ushio discloses a layer thickness detection method and apparatus including:

a characteristic quantity extraction component for extracting multiple characteristic quantities (see Figure 3, 24); and

a logical operation component (Figure 2, 17) for determining process endpoint using characteristic quantities; wherein

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the signal waveform is a spectral waveform (see Figure 1, also column 10, lines 50-65);
and

the characteristic quantities are selected from a characteristic quantity group including local maxima and minima, as well as additions and subtraction of said minima and maxima and changes in these with respect to time (see column 12, lines 26-64).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,271,047 to Ushio et al (hereafter Ushio) as applied to claims 2 and 7 above, and further in view of U.S. Patent No. 5,658,183 to Sandhu et al (hereafter Sandhu).

As to claim 4 and 6, Ushio teaches using a processor to determine a process end point.

Ushio does not teach using fuzzy logic specifically to make determinations.

Sandhu teaches determination by fuzzy logic techniques as explained above with regard to claim 3.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the processor of Ushio to perform fuzzy logic operations so that optimal parameters (or characteristic quantities) could be arrived at systematically and efficiently.

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As to claims 8 and 9, while neither Ushio nor Sandhu specifically teach normalizing waveforms before analyzing them for characteristic quantity extraction, it is notoriously well known in the art to normalize signal waveforms before analysis and it would have been obvious to one of ordinary skill in the art to do so in order to arrive at useable data.

As to claims 10-12, while neither Ushio nor Sandhu specifically teach correcting for rotation, both use rotating components in the wafer manufacturing process. It is well known in the art to account for relative speed adjustments so that accurate data may be acquired. It would have been obvious to one of ordinary skill in the art at the time of invention to include a rotational correction in the data analysis of the waveform so that usable data could be determined.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,2 and 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,271,047 to Ushio et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

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As to claims 1, 2 and 7, the apparatus claimed is broader in scope than the apparatus inherent to the method of claims 1-5 in patent '047.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J Connolly whose telephone number is 703.305.4397.

The examiner can normally be reached on 9 am-5.30 pm ... Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on 703.308.4881. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0956.

pjcc/c



Frank G. Font
Supervisory Patent Examiner
Technology Center 2800